

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ANDREW LAWRENCE, a single man,

Plaintiff,

v.

THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA,

Defendant.

Case No. CV 4-5791 FDB

ORDER GRANTING PLAINTIFF'S  
MOTION FOR ATTORNEY FEES  
AND COSTS PURSUANT TO 29  
U.S.C. § 1132

Before the court is the motion of Plaintiff Andrew Lawrence for attorney fees and costs pursuant to 29 U.S.C. § 1132. Following a non-jury trial on the Administrative Record on October 31, 2005, in which the court reversed Prudential's decision to terminate Mr. Lawrence's long-term disability benefits and ordered Prudential to pay Mr. Lawrence past due long-term disability benefits in the amount of \$100 per month from November of 2002 to the present, and to reinstate Mr. Lawrence's future long term disability benefits.

I.

A prevailing plaintiff in an ERISA case should "ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." 29 U.S.C. § 1132(g)(1). The five factors identified by the Ninth Circuit in *Hummel v. S.E. Rykoff & Co.*, 634 F.2d 446, 453 (9<sup>th</sup> Cir. 1980), support an

1 award to Plaintiff. At trial, the court found that Prudential abused its discretion in deciding to terminate  
2 Plaintiff's disability. Prudential is able to satisfy an award of attorney fees. An award of attorney fees  
3 would defer it and other insurers from wrongfully terminating disability benefits under similar  
4 circumstances. An award attorney fees and costs comports with ERISA's policy of protecting  
5 participants in benefit plans.

6 Prudential disputes that Plaintiff's lodestar is reasonable under the circumstances.<sup>1</sup> However,  
7 Prudential concedes that a reasonable fee in a matter such as this would be \$250.00 per hour. Plaintiff  
8 seeks fees at \$350.00 per hour and a multiplier of 1.5. The court finds that Plaintiff is not entitled to a  
9 multiplier as this ERISA case is not rare and exceptional. *See, Van Gerwen v. Guarantee Mutual Life*  
10 *Ins. Co.*, 214 F.3d 1041, 1045 (9<sup>th</sup> Cir. 2000). The court also finds that a reasonable fee under all the  
11 circumstances and evidence of fees charged in the area in ERISA cases, is \$300.00 per hour.

12 ACCORDINGLY,

13 IT IS ORDERED:

14 (1) Plaintiff's motion for attorney's fees and costs (Dkt.#41) is **GRANTED** as follows:

15 Attorney's fees in the amount of \$14,550.00 and costs in the amount of \$1,689.36; and

16 (2) The Clerk of the Court is directed to amend the judgment accordingly.

17 DATED this 12<sup>th</sup> day of December, 2005.

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23 FRANKLIN D. BURGESS  
24 UNITED STATES DISTRICT JUDGE

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25 <sup>1</sup>There appears to be no dispute over the Plaintiff's motion for costs.